IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.1572 OF 2004

...

The Gulbahar Co.op.Housing
Society Ltd. ...Petitioner

v/s.

The Joint Registrar,
Co.operative Societies & ors. ...Respondents

...

Mr.N.N.Bhadrashete for the Petitioner.
Mr.A.G.Damle for Respondent No.4.

...

CORAM: D.K.DESHMUKH, J.

DATED: 7TH AUGUST, 2006

P.C.:

1. By this petition the Petitioner challenges the order passed by the Divisional Joint Registrar, Co.operative Societies, Mumbai dated 25th March, 2004 passed in Revision Application No.677/2001.

2. The facts which are relevant and material are that the present Respondent No.3 was the holder of the flat and the garage in the building owned by the Petitioner-society. Admittedly, the society had permitted the Respondent No.3 to use the garage for commercial purpose and he was using it as office. Admittedly, there are two share certificates issued by the Society, one in relation to the flat and other in relation to the garage. The Respondent No.3 has transferred the garage to the Respondent No.4. Therefore, the Respondent No.4 applied for membership of the society and for transfer of the share certificate relating to the garage in his name. The society by resolution dated 13th September, 2000 rejected the application. There were three grounds given for rejecting the application, (i) that the

garage can be used only for the purpose of parking vehicles and for no other purpose. (ii) The Respondent No.3 was holding flat and garage in the building of the society and he has retained the flat and transferred only the garage; (iii) the Respondent No.3 was permitted to use the garage as office due to certain consideration and that the Respondent No.3 is misusing the permission.

3. Against this resolution, appeal was filed before the Dy.Registrar, Co.operative Societies, Mumbai, who rejected the appeal. Against that order, revision was filed before the Joint Registrar. The Joint Registrar by impugned order has allowed the revision setting aside the order of the Appellate Court as well as the resolution of the Society and directed the society to accept the Respondent No.4 as member of the society and also to transfer in his favour the share certificate relating to the garage. The present petition is directed against that order.

4. I have heard the learned Counsel appearing for the Petitioner as also the Respondent No.4. Section 23 of the Co.operative Societies Act incorporates the principles of "open membership" and lays down that a

society cannot refuse membership to a person who is qualified for the membership without there being sufficient cause. The society has given three reasons for rejecting the application for the membership filed by the Respondent No.4.

5. So far as first reason given by the society is concerned, that a garage can be used for parking of vehicles and as the Respondent No.4 proposes to use the garage as godown and office, he cannot be admitted to the membership of the society. If one looks at the bye-laws of the society, it becomes clear that the reason given is not tenable. Bye-law No.3(vi) defines the "flat". It reads as under:-

> 3(vi) "Flat" means a separate and self contained set of premises used or intended to be used for residence, or office, or show-room, or shop or godown and includes a garage, or dispensary, or consulting room, or clinic, or flour mill, the premises forming part of a building and includes an apartment;

It is clear from this provision that a garage is included in the definition of the flat and therefore,

as the flat can be used for the office and also as godown the garage can as well be used either as an office or as a garage. Therefore, the first reason that is given by the society is clearly contrary to the provisions of the Bye-laws.

6. Reference was made by the learned Counsel appearing for the Respondent No.4 to the provisions in the Bye-laws, which says that a member can use the flat allotted to him for the purposes mentioned in the allotment letter. But admittedly, there is no allotment letter issued by the society allotting the flat and the garage to the Respondent No.3. Therefore, that bye-law cannot operate to prevent either the Respondent No.3 or the Respondent No.4 from using the garage for the purpose which is permitted by the Bye-laws of the society.

7. The second reason given is that the Respondent No.3 cannot transfer the garage only retaining the flat. This reason, in my opinion, is also untenable. The society has admittedly issued two share certificates, one for the flat and the other for the garage, and therefore, I do not find any law prohibiting a member of the society from transferring

only garage. Second reason, therefore, also does not stand.

8. So far as third reason is concerned, it says that the Respondent No.3 was permitted to use the garage for office as a special case and that he is misusing that permission. I have already indicated above that the Bye-laws of the society themselves permit the flat and the garage to be used as godown and office and therefore, third reason given by the society also does not stand.

9. Perusal of the order of the Joint Registrar, Co.operative Societies, Mumbai shows that the Joint Registrar has narrated the facts elaborately and also has given cogent reasons for the order. I do not find any infirmity in the reasons that have been given by the Joint Registrar for making the order. In any case, I do not find that the order impugned results in any failure of justice so that this court can interfere with the same in its extra ordinary jurisdiction.

10. In the result, therefore, petition fails and is dismissed. Rule discharged with no order as to

costs. Request to continue operation of the ad-interim order is rejected.

...